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TIMOTHY B. FLEMING
OF COUNSEL

June 28, 2022

Via ECF Only

The Honorable Sarah Netburn
United States Magistrate Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007-1312

**Re: *In Re Terrorist Attacks on Sept. 11, 2001*, 1:03 MDL 1570 (GBD)(SN)
Ray, et al. v. Iran, et al., 1:19-cv-00012 (GBD)(SN)
Ryan, et al. v. Iran, et al., 1:20-cv-0266 (GBD)(SN)
Supplemental Letter Addressing Service of Individual Defendants**

Dear Magistrate Judge Netburn:

I write on behalf of the *Ryan* and *Ray* Plaintiffs to revise the “Supplemental Letter Motion for Leave to File Withdrawal of Motion and to File New Motion Regarding Service Upon Two Individual Defendants” submitted by these Plaintiffs’ undersigned counsel on December 21, 2021. *Ryan* Doc. No. 79; MDL Doc. No. 7493. In MDL Doc. No. 7493, the Plaintiffs responded to this Court’s December 8, 2021, Order,¹ stating that they do intend to seek damages against the two individual Defendants, Ayatollah Ali Hoseini Khamenei, Supreme Leader of Iran; and Estate of Ali Akbar Hashemi Rafsanjani, Deceased, former Chairman of the Expediency Discernment Counsel and former President of Iran, and that they would seek to enforce judgments against them individually. That intent remains. However, Plaintiffs have determined there is an alternative path to pursue those goals, and therefore submit this revised supplemental letter.

¹ On December 8, 2021, this Court issued an Order (*Ryan* Doc. No. 73; MDL Doc. No. 7440) raising a question about the implications of *Samantar v. Yousuf*, 560 U.S. 305 (2010) with regard to using the FSIA to serve individual foreign defendants seeking damages directly from those individuals. The Court directed the *Ryan* Plaintiffs to file a supplemental letter addressing *Samantar*’s implications for service on individual foreign defendants under the FSIA and directed the *Ray* Plaintiffs to join the *Ryan* Plaintiffs’ supplemental letter or submit their own by December 21, 2021. *Id.* at 2, 3.

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The *Ryan* and *Ray* Plaintiffs retract their December 21, 2021 letter in part: the *Ryan* and *Ray* Plaintiffs do not seek damages directly against these two individual Defendants, nor will they seek to enforce any *Ryan* or *Ray* judgments against these two individual Defendants in the *Ryan* and *Ray* cases. Rather, the *Ryan* and *Ray* Plaintiffs wish to proceed with service against these two individual Defendants in the above-referenced cases only in their Government Official capacities, under the Foreign Sovereign Immunities Act (“FSIA”).

However, the same Plaintiffs will file a new case against Defendants Ayatollah Ali Hoseini Khamenei and the Estate of Ali Akbar Hashemi Rafsanjani in their individual capacities, stating separate causes of action and seeking damages against the two Defendants individually, and, thereafter, will seek to enforce any judgments arising from such new case against the two individuals. Service of process in the new case will be made in compliance with *Samantar*.

In conformity with the above, the *Ryan* Plaintiffs are contemporaneously filing their motion requesting the Court to direct the SDNY Clerk of Court to dispatch the pleading service documents to the Agency and Instrumentality and Government Official Defendants, as set forth in 28 U.S.C. §1608(a)(4), and to enter such action on the docket.² Such motion will seek an order authorizing the Clerk of Court to docket and dispatch the pleading packages pursuant to the already issued letters rogatory³ using the procedures set forth in 28 U.S.C. §1608(a)(4). To be clear, with respect to the two individual Defendants, the motion will seek to use the already

² On November 18, 2021, the *Ryan* Plaintiffs filed a motion to direct the Clerk to dispatch documents to Agency and Instrumentality and Government Official Defendants as set forth in 28 U.S.C. §1608(a)(4). *Ryan* Docket No. 72; MDL Docket No. 7367. On December 8, 2021, the S.D.N.Y. Clerk of Courts notified counsel for the *Ryan* Plaintiffs that the *Ryan* Plaintiffs’ motion to direct the Clerk to dispatch documents to agency and instrumentality and government official defendants as set forth in 28 U.S.C. §1608(a)(4) was improperly filed. MDL Doc. No. 7367. Specifically, counsel for the *Ryan* Plaintiffs was notified that his e-filing was deficient because the supporting memorandum of law was not filed separately and did not receive its own document number. *See* unnumbered docket entry dated November 18, 2021 (entered on docket: December 8, 2021). Hence, the need to refile the motion.

³ The *Ryan* Plaintiffs have already obtained, via a mailing from the Court Clerk on October 7, 2021, letters rogatory to serve the six Agency and Instrumentality Defendants and Defendants Ayatollah Ali Hoseini Khamenei and the Estate of Ali Akbar Hashemi Rafsanjani in their official capacities, via the United States Department of State. *See* Motion and Memorandum of Law, dated October 5, 2021: *Ryan* Doc. No. 59; MDL Docket No. 7171; *see also* Order granting issuance of letters rogatory, dated October 6, 2021; *Ryan* Doc. No. 60; MDL Doc. No. 7221.

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issued letters rogatory to serve the individuals, Ayatollah Ali Hoseini Khamenei and the Estate of Ali Akbar Hashemi Rafsanjani, through diplomatic channels in their official capacities only.

In the near future, the Plaintiffs named in *Ryan* and *Ray* will together file, and separately serve, a new complaint against Ayatollah Ali Hoseini Khamenei and the Estate of Ali Akbar Hashemi Rafsanjani seeking damages for claims against them in their individual capacities.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Timothy B. Fleming". The signature is fluid and cursive, with a large, stylized "F" at the end.

Timothy B. Fleming (DC Bar No. 351114)
Counsel to *Ryan* and *Ray* Plaintiffs